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An Analysis of Mandatory Reporting Legislation in the USA, Canada and Australia: Features, Differences and Issues for Legislators

Dr Ben Mathews*
and
Dr Maureen C Kenny**

* Senior Lecturer, School of Law, Queensland University of Technology, Brisbane, Queensland, Australia, b.mathews@qut.edu.au

** Associate Professor, Department of Education & Psychology, Florida International University, Miami: FL, USA, kennym@fiu.edu.au

What I will discuss today

- 1. Context - nature of mandatory reporting laws
- 2. Context - purpose of reporting laws
- 3. What are the problems/issues?
- 4. Key differences in the laws
- 5. Key questions for legislators

1. Context - Nature of mandatory reporting laws

- Laws requiring designated persons to report suspected **child abuse** (sexual abuse, physical abuse, psychological abuse) and **neglect**
- designated persons are those frequently working with children, including:
 - Teachers
 - Nurses and doctors
 - Police
 - Welfare workers
- Law requires reports of specified types of abuse, where the person has a "reasonable suspicion" or "reasonable belief" of abuse/neglect of a child encountered in their professional work

2. Context - purpose of mandatory reporting laws

- Key goal: child **protection** (ie from physical, sexual, psychological abuse, and neglect)
 - Plus: early **intervention** – to minimise/prevent **costs** of abuse/neglect to individuals, families and community
 - Using expertise of professionals regularly dealing with children (eg teachers/nurses/doctors) to **increase discovery of suspected abuse/neglect**
 - Recognising that **without reports made by these professionals, many cases of abuse and neglect will not come to the attention of helping agencies**
 - Purpose: government **assistance**, not punishment
- Child abuse and neglect a significant problem: see incidence statistics...

Statistics re incidence of child abuse and neglect

- Recent annual data shows large numbers of children in substantiated cases of abuse and neglect
 - 872,000 in the USA (US Dept of Health & Human Services, 2006)
 - 85,237 in Canada (Trocmé, et al., 2005)
 - 32,485 in Australia (Australian Institute of Health & Wellbeing, 2008)
 - sexual abuse (10% of all substantiated cases);
 - physical abuse (25%);
 - neglect (25%);
 - emotional/psychological abuse (40%).
- Studies indicate substantial economic costs of CAN
 - \$94 billion in the USA (Fromm, 2001)
 - \$4.9 billion in Australia (Kids First Foundation, 2003)
- Estimated that due to increased reporting, investigation and treatment services, annual child deaths in the USA have fallen from 3,000-5,000 to about 1,100 (Besharov, 2005)
- Yet this is still just the “tip of the iceberg”

Substantiation rates of abuse/neglect per 1,000 children: jurisdictions with and without mandated reporting

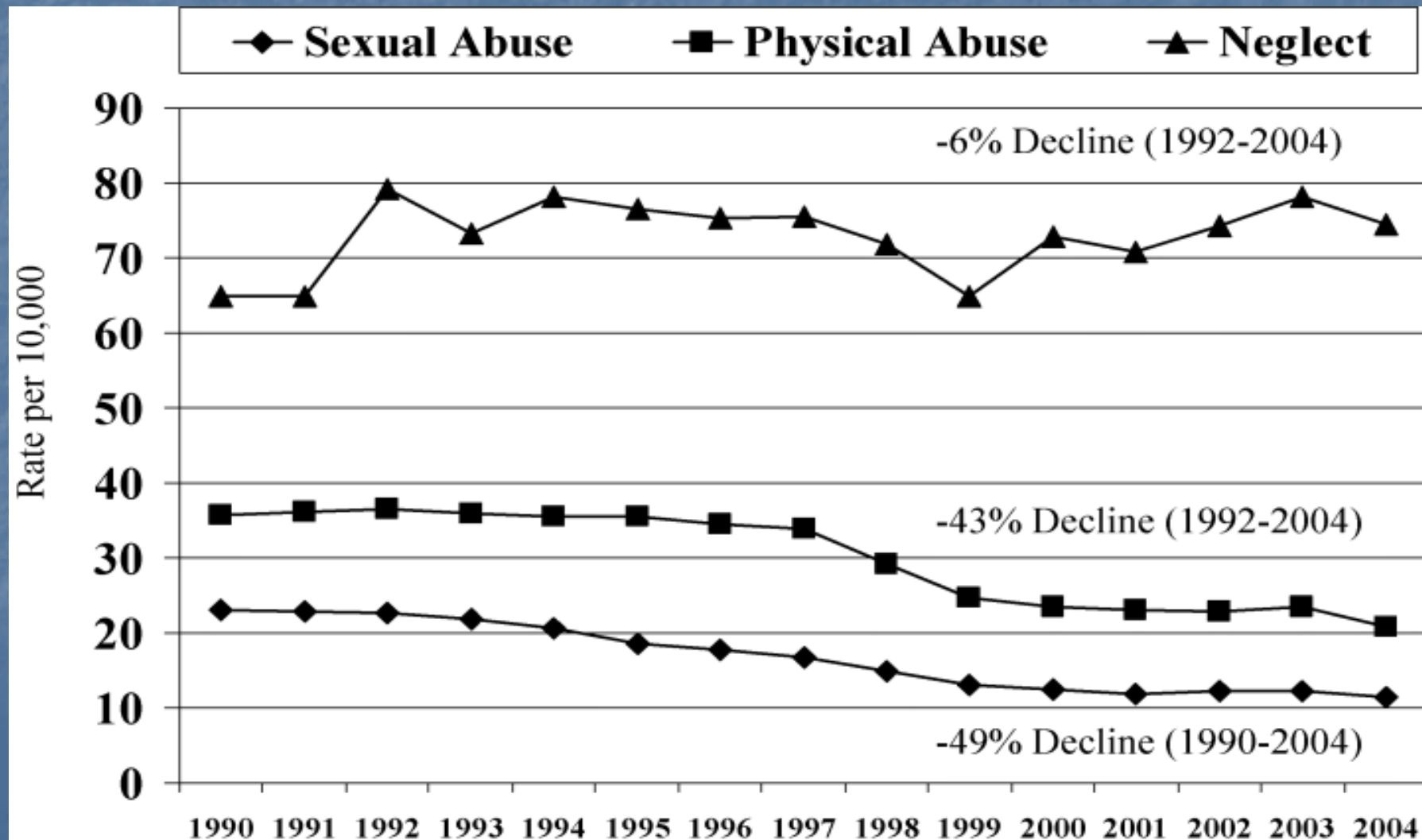
- mandatory reporting **does** appear to produce more disclosure of cases of abuse and neglect
- Jurisdictions **without** mandatory reporting:
 - **England: 2.4** (2005/06)
 - **Western Australia: 2.3** (2006/07)
- Jurisdictions **with** mandatory reporting:
 - **USA: 11.9** (2004)
 - **Canada: 13.9** (2003)
 - **Australia** (2006/07)
 - **New South Wales: 9.0**
 - **Victoria: 5.9**
 - **Queensland: 7.7**
 - **South Australia: 5.3**
 - Tasmania: 7.2**
 - Australian Capital Territory: 9.0**
 - Northern Territory: 9.3**

Contribution of mandatory reporters to discovery of child abuse and neglect

- Professionals (eg teachers, police, nurses) who are mandatory reporters are responsible for the majority of all substantiated reports of child abuse and neglect:
 - USA: 67.3% (2004)
 - Canada: 75% (2003)
 - Australia: 58.01% (estimated; 2004/05)

The Global Context: mandatory reporting may contribute to declines in incidence of serious child abuse

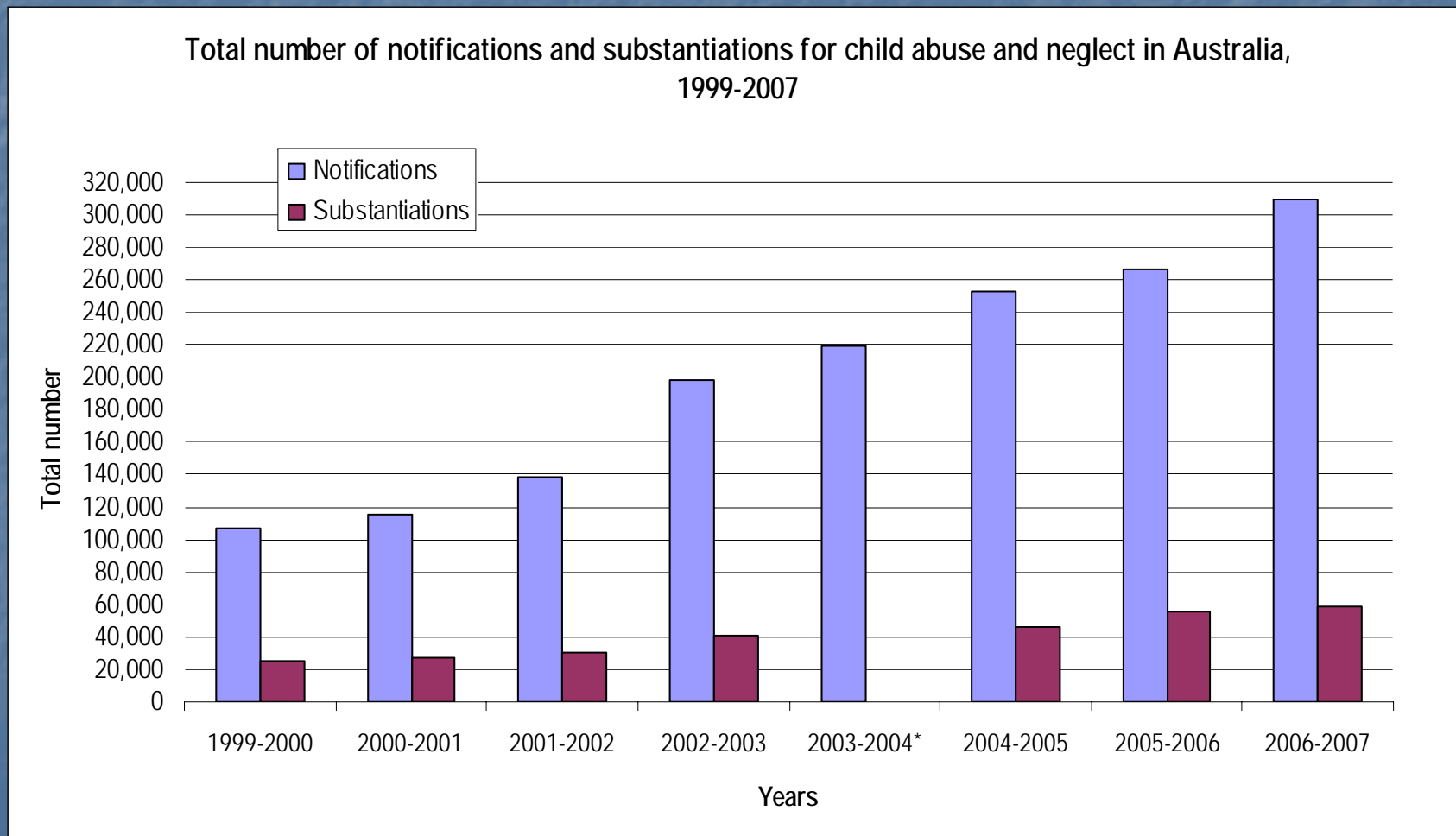
(Substantiated physical abuse, sexual abuse, and neglect, USA, 1990-2004;
Finkelhor & Jones, 2006)



3. So what's the problem? What are the issues?

- NB arguments against mandatory reporting laws
 - Inflation of unwarranted reports
 - Massive economic waste – diversion of resources from demonstrably deserving cases
 - MR laws originally created for an imagined few cases of physical abuse (+ syndrome of abuse, rather than the more complex phenomena that CAN are)
 - Harms those on whom suspicion wrongly falls
 - No better outcomes for children
 - tension between failure to report 'deserving' cases and 'overreporting' of 'undeserving' cases
- So, no MR laws in UK, for example
- NB: Are these really arguments against **all** of the laws, some **parts** of the laws? Are they about **something else** (eg lack of resources, inappropriate responses post-report)?

Over time, increasing numbers of notifications and substantiations



*Substantiation data unavailable for 2003-2004

4. Key differences in the laws: USA, Canada, Australia

- 4.1 Which groups of professionals are required to report?
 - selected professions: **most states** in USA and Australia
 - but different professions across states
 - all citizens: **18** US states, **most** Canadian provinces, **1** in Aust
- 4.2 What types of abuse and neglect have to be reported?
 - abandonment: **universal**
 - physical abuse, sexual abuse: **universal** (but differences re extent of harm...)
 - neglect: **universal** - **except** for ACT and Vic (Aust)
 - psychological/emotional abuse: in **most places**, but **not** Victoria and ACT (Aust) or Illinois, Idaho, Washington (USA) (and again, differences re extent of harm)
 - Substance-exposed newborns: **27** US states
 - Exposure to drug activity: **18** US states
 - Prenatal maternal substance abuse: **3** US states
 - Exposure to domestic violence: only **selected jurisdictions**
 - NSW, Tas (Aust); 7 provinces in Canada; few expressly in USA (cf Montana, West Virginia) but many others could possibly apply

- 4.3 What extent of suspected harm activates the reporting duty?
- Here is where things get tricky
- Is **all** abuse and neglect to be reported, or only abuse and neglect suspected to cause a certain degree of harm?
- The laws are generally **not** intended to produce reports of **any** less than ideal parenting practice, or of **trivial** incidents
 - **Sexual abuse**: the simplest case? Is any and all suspected sexual abuse to be reported, with no requirement re extent of harm?
 - **Generally, yes.**
 - But, differences even exist here: “significant harm” (Vic and Qld: Aust); “seriously endangers” health/safety (Louisiana), health/welfare harmed or threatened (Miss, NH: USA)

■ Physical abuse

- Approach 1: “harm or threatened harm”: 29 US states, most Canadian provinces,
- Approach 2: nonexhaustive list of types of injury sufficient to require a report: 6 US states
- Approach 3: exhaustive list of types of injury sufficient to require a report: 3 US states
- Approach 4: “serious” injury or “significant” harm or “substantial” impairment of health: 13 US states, 6 Aust states
- Nb corporal punishment – 21 US states, and Yukon (Can) exclude reasonable CP from cases requiring a report; Aust law also allows reasonable CP.

■ Psychological abuse

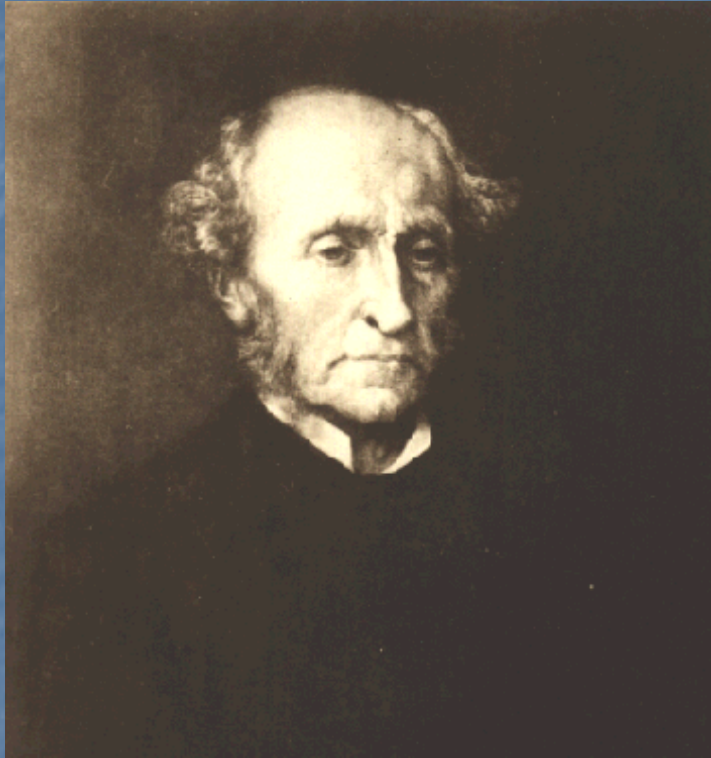
- Fairly **similar approach**, requiring a certain extent of harm, eg
 - “significant”, “serious” or “severe” harm (Aust, Canada)
 - Observable and/or substantial impairment in the ability to function (USA jurisdictions)
 - Seriously endangering child’s health (Louisiana)
 - Plus medical opinion supporting this (Sth Carolina)
 - Detailed definition of “emotional damage”, needing evidence of severity

■ Neglect

- USA, Aust: **similar approach**, defining “neglect” ambiguously as:
 - failure to provide “basic” or “adequate” or “proper” or “necessary” care
 - often, no further description of degree of harm needed to activate reporting duty
 - But some jurisdictions require “substantial” or “serious” or “significant” impairment of the child’s functioning
 - Nb most USA states expressly exclude **poverty-based** neglect from duty to report
- **Contrast**: most Canadian provinces do not define (or even use) the term neglect; instead detail circumstances of parental failure to act (eg medical neglect; and parents unable or unwilling to provide adequate care, supervision or control)

5. Six key questions for legislators

1. Which groups of professionals should be required to report?
 - Or, should all citizens be required to report?
2. What types of abuse (physical, emotional, sexual) and neglect should be required to be reported?
 - Are any “new” types of abuse required to be reported? (eg exposure to drug use, or to domestic violence, or substance-exposed newborns)
3. Does the reporting obligation apply to any suspected occurrence of the abuse?
 - Or, is it limited to require reports only of suspected abuse causing a specified extent of harm eg “significant harm”? If so, how is this best done?
4. What level of suspicion is required to activate the reporting duty (and how is this best expressed)?
5. For physical, emotional and sexual abuse, are reports required of suspected abuse by anyone?
 - Or only abuse by selected persons (eg parents/caregivers)?
6. Are reports required only of past or present abuse?
 - Or, are reports also required of suspected risk of future abuse that has not happened yet (and if so, under what circumstances)?



Children must be protected
from external injury.
The family sphere is the
most important domain
requiring state control to
prevent abuse of power.

John Stuart Mill
(1859)



"What matters for pragmatists is devising ways of diminishing human suffering and increasing human equality, increasing the ability of all human children to start life with an equal chance of happiness."

Alan Dershowitz

For detailed discussion:

- See:
 - B Mathews and M Kenny, 'Mandatory reporting legislation in the USA, Canada and Australia: a cross-jurisdictional review of key features, differences and issues' (2008) 13 *Child Maltreatment* 50-63.
 - This article is freely accessible at:
http://eprints.qut.edu.au/view/person/Mathews,_Benjamin.html